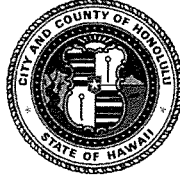


**OFFICE OF THE MAYOR  
CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 300 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-4141 \* FAX: (808) 768-4242 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



KIRK CALDWELL  
MAYOR

EMBER LEE SHINN  
MANAGING DIRECTOR DESIGNATE

GEORGETTE T. DEEMER  
DEPUTY MANAGING DIRECTOR

March 20, 2013

The Honorable Ernest Y. Martin, Chair  
and Members  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

**SUBJECT: Bill 4 (2013) - Relating to the Grants in Aid Fund**

I support Bill 4's intent to define the procedures for awarding the grants in aid from the newly created Charter amendment establishing the Grants in Aid Fund. Thank you to Chair Martin and other members of the City Council who attempted to work with my administration to address concerns about the provisions regarding the timelines for awarding and making payments on the awards, as well as, the inappropriate designation of the Director of Budget and Fiscal Services as the administrator.

Since the CD2 version of this bill is up for third reading and I am uncertain about the final form of the bill, I write to express my continuing concern. The bill was reported out of the Budget Committee on February 27, 2013 for passage on third reading, as amended in CD2 form. In my view, which is supported by the attached opinion of the Corporation Counsel, Section 5 of the bill is contrary to the Revised Charter of the City and County of Honolulu 1973, as amended (the "Charter"), and should not remain in the bill in its present form for two reasons.

First, in calling for the Director of Budget and Fiscal Services to administer grants awarded from the Grants in Aid Fund, this provision clearly violates Charter Section 6-302, as amended by the voters last November. That section explicitly mandates that the Director of Community Services administer grants awarded from the Grants in Aid Fund.

I ask that the City Council consider amending Section 5 to designate the Director of Community Services as the Grants Administrator in accordance with the new Charter amendment. Although I do not think it is necessary to include a reference to Budget and

RECEIVED  
CITY CLERK  
C & C OF HONOLULU  
2013 MAR 20 AM 9:03

The Honorable Ernest Y. Martin, Chair  
and Members  
March 20, 2013  
Page 2

Fiscal Services in Section 5, I do not object to the designation of Budget and Fiscal Services as being responsible for the Fund because the Charter already specifies that Budget and Fiscal Services is responsible for all funds of the City.

Second, in prohibiting delegation of grant administration duties by the Director of Budget and Fiscal Services, this provision clearly violates Charter Section 13-120 regarding coordination of work among the several agencies of the City, and also infringes upon the authority of the Mayor to assign duties among agencies in the Executive Branch under Charter Section 4-105.5.

I recognize that the City Council has concerns over how grants have been administered in the past and the timeliness of payments to grant recipients. I will be working with my Administration to address these concerns and work toward streamlining the process so that non-profit organizations are not burdened by unnecessary procedural delays.

I respectfully ask you to reconsider this provision in the current CD2 version of Bill 4 in order to comply with the mandatory language of the Charter, by clarifying that the Director of Community Services rather than the Director of Budget and Fiscal Services shall be responsible to administer the grants and deleting the non-delegation provision. I hope that we can work together to resolve this matter before final adoption of the bill.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Caldwell', with a long horizontal flourish extending to the right.

Kirk Caldwell  
Mayor

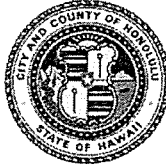
KC:jh

Attachment

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 110 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-5193 \* FAX: (808) 768-5105 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR

DIANE T. KAWAUCHI  
ACTING CORPORATION COUNSEL



March 19, 2013

**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGE**  
**DO NOT CIRCULATE**

**MEMORANDUM**

TO: KIRK CALDWELL, MAYOR

FROM: GORDON D. NELSON  
DEPUTY CORPORATION COUNSEL

SUBJECT: BILL 4, CD2 (2013) RELATING TO THE GRANTS IN AID FUND

This Memorandum responds to your request for an analysis of legal issues raised by Bill 4, Relating to the Grants in Aid Fund, which as amended in CD2 form, was reported out of the Budget Committee on February 27, 2013 for passage on third reading. The bill is currently on the Council's March 20, 2013 agenda.

**Question Presented**

Specifically, you have requested an opinion as to whether Bill 4 in its current form is in any respect contrary to the Revised Charter of the City and County of Honolulu 1973, as amended (the "Charter").

**Brief Answer**

Yes, in our opinion current Section 5 of the bill is contrary to the Charter in three respects. First, the authorization of the Director of Budget and Fiscal Services (BFS) to administer grants awarded from the grants in aid fund conflicts with Charter Section 6-302. Second, in prohibiting the BFS Director from delegating grant administration duties,

Section 5 of the bill violates Charter Section 13-120. Third, the prohibition in Section 5 against delegation also interferes with the authority of the Mayor to assign duties among agencies in the executive branch under Charter Section 4-105.5.

### Background

In November of 2012, voters in the City and County of Honolulu approved a City Charter amendment that added a new section to Article 9, Chapter 2 to the Charter and established a grants in aid fund ("Fund"). The Charter amendment had been proposed in Resolution 12-44, CD1, FD1, which resolution was adopted by the Council on May 9, 2012.

Pursuant to Section 9-205.8, added to the Charter by the amendment, the Council was authorized to establish by ordinance procedures for the administration and expenditure of moneys in the Fund. Bill 4 was introduced on January 24, 2013, with the express purpose of creating the Fund.

Among other things, the bill establishes a grants in aid advisory commission to make recommendations regarding expenditures consistent with priorities established by the Council; sets deadlines for the submission of funding applications and for the submission of the commission's report to the Council<sup>1</sup> making recommendations for funding; and provides for Council selection of projects through the budget process.

Most pertinent to your inquiry, Section 5 of the bill deals with administration of the Fund. Section 5 of the current version of Bill 4 reads as follows:

#### Sec. 6-\_\_5 Administration.

The director of budget and fiscal services shall administer the fund and administer the projects funded by grants awarded from the grants in aid fund. Procedures for the administration of the fund and the expenditure of grants awarded from the fund shall be established by the director by rule. The director shall not delegate any of these duties to another city department.

The Charter amendment approved by the electorate in the November also dealt with administration of grants under the Fund. The electorate amended Section 6-302 of the Charter to specify that the Director of Community Services (DCS) shall "[a]dminister grants awarded from the grants in aid fund."

---

<sup>1</sup> The Charter Amendment established an "advisory commission to the city", and not to the Council per se. Inasmuch as the Mayor appoints the members of the commission, it seems at least as logical, if not more logical, to interpret the commission's advisory function to be to advise the Mayor. At the very least, it would be appropriate for the commission to submit its report to the Mayor, as well as the Council.

Thus, the current language in Bill 4 authorizing the BFS Director to administer projects funded by grants from the Fund, differs from the language contained in the recently enacted Charter amendment

Section 5 also purports to limit the authority of the BFS Director to delegate the administrative duties conferred to other City departments.

#### Discussion

- I. In calling for the Director of Budget and Fiscal Services to administer grants awarded from the grant in aid fund, Section 5 of the bill violates Charter Section 6-302.

In providing that the BFS Director shall be responsible for administration of the Fund, Section 5 of the bill is consistent with Section 6-203(i) of the Revised Charter of Honolulu (Charter) which specifies that the BFS Director shall be "responsible for the management of city funds."

However Section 5 goes on to require that the BFS Director administer "the projects funded by grants awarded from the grants in aid fund" and that the BFS Director establish rules to administer the fund and the expenditure of grants awarded from the fund.

In this respect Section 5 conflicts with the Charter 6-302 as amended by the voters last November. That section mandates that the director of community services administer grants awarded from the Fund. It reads as follows:

Section 6-302. Powers, Duties and Functions --

The director of community services shall:

- (a) Develop and administer projects, programs and plans of action for human resources, human services and housing programs.
- (b) Develop and administer projects, programs and plans of action designed to achieve sound community development, provided that such projects, programs and plans of action conform to and implement the general plan and development plans.
- (c) Administer grants awarded from the grants in aid fund.
- (d) Act as the local public officer for the purpose of implementing federally-aided and state-aided human resources, human services, housing, urban renewal and community development programs. [Emphasis added].

A municipal ordinance must conform to, be subordinate to, not conflict with, and not exceed municipal charter, and, just as legislative act may not modify or supersede provision of State Constitution, nor may ordinance change or limit charter's effect. Harris

v. DeSoto, 80 Hawai'i 425, 911 P.2d 60 (1996); ordinance which conflicts with express provision in charter is invalid. Fasi v. City Council of the City and County of Honolulu, 72 Haw. 513, 823 P.2d 742 (1992).

Because Section 5 directly conflicts with the Charter in specifying which executive branch department is empowered to administer grants awarded from Fund, it is invalid to that extent.

- II. In prohibiting delegation of grant administration duties by the Director of Budget and Fiscal Services, Section 5 of the bill violates Charter Section 13-120.

Charter Section 13-120, regarding coordination of work among the several agencies of the City, provides:

Section 13-120. Coordination of Work --

The several agencies of the city shall devise a practical and working basis for cooperation in and coordination of work, eliminating duplication and overlapping of functions and shall, so far as practicable, cooperate with each other in the use of employees, land, buildings, quarters, facilities and equipment. The head of any agency may empower or require an employee of another agency, subject to the consent of the head of such other agency, to perform any duty which might be required of employees of the former agency. Whenever, in this charter, power is vested in an agency to inspect, examine or secure data or information or to procure assistance from any other agency, a duty is hereby imposed upon the agency upon which demand is made to render such power effective. [Emphasis added].

The Charter thus recognizes the wisdom of permitting cooperation and collaboration among executive branch agencies, and institutionalizes the Charter authority of department and agency heads to delegate duties to employees of other departments, with the consent of the head of the agency accepting the delegation.

Contrary to the permissive language of the Charter regarding the authority of agency heads to delegate, Section 5 of the current version of Bill 4 provides that the Director "shall not delegate any of these duties to another city department."

Because Section 5 directly conflicts with the Charter with respect to the authority of department heads to delegate duties, it is in that respect invalid. Harris v. DeSoto, *supra*; Fasi v. City Council of the City and County of Honolulu, *supra*.

- III. The prohibition on delegation of grant administration also interferes with the authority of the Mayor to assign duties among agencies in the executive branch under Charter Section 4-105.5.

Charter Section 4-105.5, regarding the powers and duties of heads of executive agencies provides:

Section 4-105. Powers and Duties of Heads of Executive Agencies --

1. Subject to the provisions of this charter and applicable regulations adopted thereunder, the heads of the executive agencies of city government shall have the power and duty to take all personnel actions.
2. Each head of an executive agency of city government may assign and reassign duties to employees and supervise the performance thereof.
3. Each head of an executive agency of city government may, subject to approval of the mayor or the managing director, prescribe such rules and regulations as are necessary for the organization and internal administration of the executive agency.
4. Rules and regulations affecting the public as may be necessary to the performance of the functions assigned to executive agencies may be promulgated as authorized by this charter or by law. Such rules and regulations, after public notice and public hearing and upon approval by the mayor, shall have the force and effect of law. Each head of an executive agency shall file in the office of the city clerk not less than three copies of such rules and regulations. The rules and regulations may be amended or repealed by the same process required for original promulgation.
5. Each head of an executive agency shall perform such duties not inconsistent with the duties of that office as may be assigned by the mayor. [Emphasis added].

In recognizing the authority of the Mayor to assign other or additional duties to the heads of executive agencies, not inconsistent with the duties of office, the Charter gives effect to an essential aspect of the executive power. The ability of the Mayor to control the manner of functioning of the executive branch, consistently with the Charter, but without unwarranted interference from the legislative branch, goes to the core of the doctrine of separation of powers embodied in the City's Charter.

Section 5's limitation on delegation of duties has the effect of interfering with the authority of the Mayor to assign duties among agencies in the executive branch under Charter Section 4-105.5. As long as the Mayor acts within the confines of the Charter, his decisions regarding how to organize the executive branch and have it carry out its duties, should not be limited or second-guessed by the legislative branch.

Mayor Kirk Caldwell  
March 19, 2013  
Page 6

The Charter has as its basic scheme a clear and definite separation of the legislative power and the executive power of the City and County, vesting the former in the legislative branch represented by the council and the latter in the executive branch headed by the mayor. Akahane v. Fasi, 58 Haw. 74, 565 P.2d 552 (1977). In order to give effect to Section 5's purported prohibition on delegation of duties, one would have to ignore the basic rules of statutory construction and the very structure of the Charter itself, which anticipates separation of legislative and executive power.

In our opinion, the bill's bar on delegation of duties, if enacted, would violate the intent of Charter Section 4-105.5.

#### Conclusion

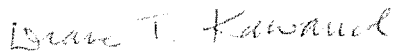
For the foregoing reasons, if Bill 4, CD2 passes in its current form, the Department of Corporation Counsel could not approve the bill as to form and legality.

It is our further opinion that the inclusion of Section 5 in the final bill as currently drafted would justify the exercise the mayoral veto power.



GORDON D. NELSON  
Deputy Corporation Counsel

APPROVED:



DIANE T. KAWAUCHI  
Acting Corporation Counsel

GDN: jh

13-01525/275770